srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2851 OF 2007.

Smt. Meena Waman Borkar. ..Petitioner.

V E R S U S

The State of Maharashtra & Others. ..Respondents.

Mr. N. V. Bandiwadekar for the petitioner.

Mr. C. R. Sonawane A.G.P. for the State.

CORAM: S. B. MHASE & D.G.KARNIK,JJ.

DATE: SEPTEMBER 26, 2007.

P.C.

1. Heard learned counsel for the petitioner. By this petition the petitioner challenges the order dated 31.7.2006 passed by the Principal Secretary, Education Department rejecting the petitioner's claim for condonation of break in service of 2 years, 3 months and 10 days. The said order was communicated to the petitioner by respondent no.2 vide its letter dated 28th August 2007, copy whereof is annexed at Exhibit-"E" to the petition.

2. Petitioner was employed as an Assistant Teacher in a recognised and grantable school. She

retired from service on 31st May 2005. The petitioner initially worked as an Assistant Teacher from 1.6.1970 till 13.6.1978. However there was break in service of the petitioner from 14.6.1978 till 24.9.1980 and she was again appointed on 25th September 1980 and she retired on 31st May 2005 after completing the service of 24 years, 8 months and 6 days. The said service is pensionable and the petitioner is receiving pension.

3. The petitioner requested for condonation of break in her service from 14.6.1978 to 24.9.1980, i.e., a period of 2 years, 3 months and 10 days, which was turned down by the impugned order. Learned counsel for the petitioner invited our attention to the G.R. dated 10th May 1989 regarding the condonation of break in service. Paragraph no.1 of the said G.R. specifies the conditions for the condonation of break in service. Clause-3 specifies that break for a period of more than two years would not ordinarily be condoned, however paragraphs 3 & 4 give power to the Principal Secretary to condone the break in excess of two years. According to the petitioner, Principal Secretary ought to have exercised the power and condoned the break, and he wrongly refused to condone the break.

4. We are of the view that though the power

of condonation of break exists with the Principal Secretary, he is not bound to condone the break in every case. Whether to condone the break or not is an administrative decision which he takes after taking into consideration all relevant factors. In the present case the Principal Secretary has taken into consideration all the relevant factors and has not taken into consideration any irrelevant factors. He has noted that the petitioner has completed 24 years of continuous service and therefore is receiving pension. He has held that the break cannot be condoned merely for the purpose of enlargement or augmentation of the pension. No error or irregularity is shown in the decision making process. Hence the decision is not open to judicial review. The writ petition is rejected summarily.

(D.G.KARNIK, J.) **(S.B.MHASE, J.)**